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9

10 UNITED STATES DISTRICT COURT
11
CENTRAL DISTRICT OF CALIFORNIA
12
WESTERN DIVISION

13 TELEDYNE TECHNOLOGIES, INC.,
14 a Delaware corporation,

15 Plaintiff,

16 vs.

17 HONEYWELL INTERNATIONAL,
18 INC., a Delaware corporation,

19 Defendant.
20
AND COUNTERCLAIM

CASE NO. CV 06-06803-MMM (SHx)

PLAINTIFF AND COUNTER-
DEFENDANT TELEDYNE
TECHNOLOGIES
INCORPORATED'S RESPONSIVE
CLAIM CONSTRUCTION BRIEF

[Declaration of Anthony P. Alden filed
concurrently herewith]

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1 **I. INTRODUCTION**

2 In urging artificially narrow definitions for Teledyne's '990 patent, Honeywell
 3 ignores both the Examiner's stated reasons for allowance and the teachings of the *en*
 4 *banc* Federal Circuit in Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005). In
 5 allowing the '990 patent, the Examiner made clear that a weight-on-wheels
 6 transmission trigger had nothing to do with the patent's validity. And, the Federal
 7 Circuit in Phillips prescribed that claim interpretation must be found in "the words
 8 of the claims themselves, the remainder of the specification, the prosecution history,
 9 and the extrinsic evidence concerning relevant scientific principles, the meaning of
 10 technical terms, and the state of the art." Id. at 1314 (citing Innova/Pure Water, Inc.
 11 v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1116 (Fed. Cir. 2004)). In
 12 particular, the Federal Circuit warned against artificially narrowing the scope of
 13 patent claims by importing the limitations of the preferred embodiment from the
 14 specification, as Honeywell now advocates:

15 It is a "bedrock principle" of patent law that "the claims of a patent
 16 define the invention to which the patentee is entitled the right to
 17 exclude." . . . [A]lthough the specification often describes very
 18 specific embodiments of the invention, we have repeatedly warned
 19 against confining the claims to those embodiments . . . In
 20 particular, we have expressly rejected the contention that if a
 21 patent describes only a single embodiment, the claims of the patent
 22 must be construed as being limited to that embodiment . . . That is
 23 not just because section 112 of the Patent Act requires that the
 24 claims themselves set forth the limits of the patent grant, but also
 25 because persons of ordinary skill in the art rarely would confine
 26 their definitions of terms to the exact representations depicted in
 27 the embodiments.

28 Phillips, 415 F.3d at 1312, 1323 (citations omitted).

1 Two years after the '990 patent issued, it was forced into reexamination by
 2 Honeywell's licensor, Harris Corporation. Harris claimed that the '990 patent was
 3 invalid, but the Patent Office disagreed. In allowing the '990 patent for a second
 4 time, the Examiner provided the following summary of the Teledyne arguments
 5 upon which he relied and with which he agreed:

6 As argued by the Patent Owner, the art of record fail [sic] to teach
 7 an aircraft data transmission system and method comprising,
 8 among other limitations, at least one first sensor on the aircraft
 9 which gathers in-flight data and at least one second sensor
 10 configured to sense a landing of the aircraft, wherein
 11 communication is initiated via a cellular infrastructure in response
 12 to the second sensor sensing the landing of the aircraft.

13 (Declaration of Anthony P. Alden ("Alden Decl."), Ex. A at 33) (emphasis added).

14 The Examiner thereby made clear to anyone reading the File History that, for
 15 purposes of validity, the PTO interpreted the patent as covering any "second sensor
 16 sensing the landing of the aircraft," if part of the patented system. This would
 17 include, not only the preferred embodiment of weight-on-wheels, but any sensor that
 18 could "sense a landing of the aircraft," such as sensing a decrease in ground speed of
 19 the tires, the opening of a cabin door, or the application of the brakes. This is
 20 because, contrary to Honeywell's contention, to one skilled in the art, "landing" does
 21 not simply mean touching-down:

22 The landing process must never be considered complete until the
 23 airplane decelerates to the normal taxi speed during the landing roll
 24 or has been brought to a complete stop when clear of the landing
 25 area.

26 (See Alden Decl., Ex. B at 45).

27 Thus, there is no merit in Honeywell's attempt to limit the patent to a weight-
 28 on-wheels sensor by narrowly defining the isolated terms "landing," "when,"

1 "upon," "automatically," and "in response to." Similarly, for the reasons discussed
 2 below, there is no basis for artificially limiting the transmission technology and
 3 components—cellular infrastructure, cell channels, and serial card—to preferred
 4 embodiments in the specification, none of which have anything to do with the
 5 Examiner's reasons for allowance.

6 **II. HONEYWELL MISINTERPRETS AND MISAPPLIES PHILLIPS**

7 Ignoring the mandate of Phillips, Honeywell attempts to artificially limit
 8 various terms to the examples given in the specification, including the terms
 9 "landing" (attempts to limit to the "weight-on-wheels" preferred embodiment); "data
 10 acquisition unit" (attempts to limit to the "flight data acquisition unit" example);
 11 "cellular infrastructure" (attempts to include the structural components disclosed in
 12 the specification); and "serial card" (attempts to limit to the "multi-port serial card"
 13 example in the specification).

14 In each case, however, Honeywell fails to point to any disclaimer in either the
 15 specification or the file history that would limit these terms to their preferred
 16 embodiments. Phillips, 415 F.3d at 1316 ("the specification may reveal an
 17 intentional disclaimer, or disavowal, of claim scope by the inventor."); Id. at 1317
 18 (the prosecution history can reveal "whether the inventor limited the invention in the
 19 course of prosecution . . ."). Without such a disclaimer, Honeywell's limiting
 20 constructions must be rejected. Id. at 1323 ("although the specification often
 21 describes very specific embodiments of the invention, we have repeatedly warned
 22 against confining the claims to those embodiments.").

23 Honeywell's error is particularly egregious given that its narrowing
 24 constructions are typically based on nothing more than abstract general dictionary
 25 definitions, without reference to the specification or prosecution history. As the
 26 Federal Circuit explained:

27 The main problem with elevating the dictionary to such
 28 prominence is that it focuses the inquiry on the abstract meaning of

words rather than on the meaning of claim terms within the context of the patent. . . . [H]eavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification. *Id.* at 1321.

This is exactly the systematic error that Honeywell makes throughout its opening brief. As discussed below, the recurring theme of the parties' claim construction disputes in this case is that Teledyne's starting point is the ordinary meaning of the claim terms, unless disclaimed or otherwise specially defined in the specification. In contrast, Honeywell's starting point is the preferred embodiment disclosed in the specification, which it then attempts to support by non-contextual dictionary definitions. Phillips mandates that Teledyne's approach is correct.

III. TELEDYNE'S '990 PATENT

A. "Landing Elements"

1. Honeywell's Construction Improperly Imports a Preferred Embodiment Into the Claims

Each of Honeywell's constructions for the "landing elements" attempts to limit the concept of landing to "touching down." Honeywell adopts this position in the hopes of avoiding infringement by narrowing the scope of Teledyne's invention to the transmission of flight data from an aircraft the very instant the aircraft hits the ground. Honeywell argues that, because the specification discusses a weight-on-wheels signal as a preferred embodiment of a transmission trigger, transmission must always begin precisely when an aircraft's wheels first hit the ground. (HW Opening Brief at 6).

However, absent a special definition of "landing" in the specification or file history, disclaiming transmission at any point after "touching down," Honeywell's artificially narrow construction must be rejected. Phillips, 415 F.3d at 1320 ("[O]ne

1 of the cardinal sins of patent law [is] reading a limitation from the written
 2 description into the claims.") (citation omitted).

3 2. Nothing In the File History Suggests That Teledyne Limited
 4 "Landing" to "Touching Down"

5 During the original prosecution of the '990 application, the Examiner rejected
 6 as-filed claims 1, 4, 7-8, 10, 12, and 14-20 as anticipated or rendered obvious by
 7 U.S. Patent No. 5,550,738 (issued Aug. 27, 1996; Bailey, *et al.*). He reasoned that
 8 since once an aircraft had landed it becomes a land vehicle, there is no difference in
 9 transmitting data from an aircraft, as opposed to transmitting data from any other
 10 land vehicle, as disclosed by Bailey. (Alden Decl., Ex. C at 51). To overcome this
 11 rejection over a conventional land vehicle, Teledyne amended the claims to clarify
 12 that transmission of flight data is "initiated automatically upon landing of the
 13 aircraft." (*Id.* at 61-64).

14 Contrary to Honeywell's contention, nothing in the original file history
 15 implies that the insertion of the words "upon landing" was intended to narrow the
 16 invention to immediately upon "touching down," as opposed to any other time after
 17 landing. Rather, as evidenced by the Examiner's reasons for allowance, the intent
 18 was merely to tie transmission of flight data to the process of an aircraft landing, and
 19 nothing reflects any intent to restrict how or when such landing might be sensed.

20 This is confirmed by the Reexamination History. The Reexaminer initially
 21 rejected claims 1, 4, 6, 7, 15-20, and 33 as being anticipated by U.S. Patent No.
 22 5,351,194 (issued Sept. 27, 1994; Ross, *et al.*). (Alden Decl., Ex. A at 3-5, 9-11). To
 23 overcome this rejection, Teledyne amended the claims to insert the phrase: "at least
 24 a second sensor configured to sense a landing of the aircraft." (*Id.* at 17-22, 24-25).

25 The Reexamination file history nowhere suggests that the sensor must sense
 26 the preferred embodiment "weight-on-wheels," as opposed to the myriad of other
 27 sensors that can sense landing, such as a decrease in speed or doors opening. This

1 was made clear by the Reexaminer, who made no mention of weight-on-wheels in
 2 his reasons for allowance:

3 As argued by the patent owner, the art of record fail [sic] to teach
 4 an aircraft data transmission system and method comprising,
 5 among other limitations, at least one first sensor on the aircraft
 6 which gathers in-flight data and at least one second sensor
 7 configured to sense a landing of the aircraft, wherein
 8 communication is initiated via a cellular infrastructure in response
 9 to the second sensor sensing the landing of the aircraft.

10 (Alden Decl., Ex. A at 33).

11 Accordingly, the file history simply does not support Honeywell's
 12 attempt to limit the sensor that senses landing to just one of the myriad of
 13 sensors that can perform this function. Without such support, Honeywell's
 14 narrow construction of "landing" must be rejected.

15 3. The '990 Specification Refers to the Transmission of Flight Data
 16 After the Aircraft Has Landed

17 Honeywell argues that "nothing in the '990 patent suggests, let alone dictates,
 18 the meaning urged by Teledyne." (HW Opening Brief at 6). This assertion,
 19 however, deliberately ignores numerous references in the specification and the
 20 claims. For example, the specification explains that the "cellular infrastructure [is]
 21 in communication with the data communication unit after the aircraft has landed."
 22 (Declaration of Joseph M. Paunovich ("Paunovich Decl."), Ex. 1, 1:66-2:1).¹ Figure
 23 1 also shows an aircraft "after landing." (*Id.* at 2:64-65).

24 What is more, the specification reveals that, contrary to Honeywell's
 25 construction, the patentee contemplated time passing between touching-down and
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 28

1 data transmission. In discussing a preferred embodiment, the specification states
 2 that "[u]pon receipt of the weight-on-wheels signals from the landing gear of the
 3 aircraft 12, the processor 32 prepares the flight data for [later] transmission . . ."
 4 (Paunovich Decl., Ex. 1, 3:30-32) (emphasis added). This language shows that the
 5 patentee contemplated some unspecified time passing between "touching down" and
 6 transmission, during which time the data to be transmitted is processed. Because
 7 Honeywell's construction forces data to be "downloaded as soon as the plane lands,"
 8 it would exclude this preferred embodiment, and must therefore be rejected. Dow
 9 Chem. Co. v. Sumitomo Chem. Co., Ltd., 257 F.3d 1364, 1378 (Fed. Cir. 2001)
 10 ("[A] claim construction that excludes a preferred embodiment is '*rarely, if ever,*
 11 *correct.*'") (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583 (Fed.
 12 Cir. 1996)) (emphasis in original).

13 Finally, as discussed in Teledyne's Opening Claim Construction Brief,
 14 Honeywell's "touching down" construction renders claim language superfluous.
 15 Claims 1, 19 and 33 include "at least a second sensor" that senses the aircraft has
 16 landed, and claim 18 includes "at least a first sensor" that senses the aircraft has
 17 landed. (Paunovich Decl., Ex. 2, 1:34-35, 66-67, 2:19-20, 35-36) (emphasis added).
 18 By using the words "at least," these claims contemplate that the aircraft could have a
 19 third, fourth or even fifth sensor that senses that the aircraft has landed. For
 20 example, the aircraft may sense weight-on-wheels and then a rapid decrease in
 21 ground speed.

22 Under Honeywell's "touching down" construction, however, transmission
 23 must begin "immediately" upon the aircraft receiving the weight-on-wheels signal,
 24 even if it is yet to receive the "speed decrease" signal. Such a construction thus
 25 renders the words "at least" in claims 1, 18, 19, and 33 superfluous because—even if

27 ¹ All references herein to the Declaration of Joseph M. Paunovich are to the
 28 (footnote continued)

1 there are additional sensors—transmission must always be triggered by the "second
 2 sensor." In contrast, Teledyne's constructions harmonize the claim language
 3 because transmission can begin after all sensors sense that the aircraft has landed.
 4 Innova, 381 F.3d at 1119 ("all claim terms are presumed to have meaning in a
 5 claim.").

6 4. Leading Aeronautical Texts Also Demonstrate That "Landing" Is
 7 Not Limited to "Touching Down"

8 Were a person of ordinary skill in the art of aircraft communications to
 9 consult extrinsic evidence to understand a term in the '990 patent, he or she may
 10 consult a technical dictionary, but not the Merriam-Webster's Collegiate Dictionary,
 11 The Oxford English Dictionary or any other general dictionary urged by Honeywell.
 12 This is because, as the Phillips court noted, "general dictionaries collect definitions
 13 of a term as used not only in a particular field, but in many different settings."
 14 Phillips, 415 F.3d at 1321.

15 Indeed, contrary to Honeywell's general dictionary definitions, seminal texts
 16 in the aeronautical field confirm that a person of ordinary skill in the art would not
 17 limit "landing" to merely "touching down." Rather, "landing" is a phase or process
 18 that begins with touching down and ends when the aircraft is brought to normal
 19 taxiing speed or a stop. For example, the *Airplane Flying Handbook* published by
 20 the Federal Aviation Administration ("FAA") states:

21 The landing process must never be considered complete until the
 22 airplane decelerates to the normal taxi speed during the landing roll
 23 or has been brought to a complete stop when clear of the landing
 24 area. Many accidents have occurred as a result of pilots abandoning

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 26
 27 declaration filed in support of Teledyne's Opening Claim Construction Brief.
 28

1 their vigilance and positive control after getting the airplane on the
 2 ground.

3 (See Alden Decl., Ex. B at 44).

4 Similarly, the *2001 Federal RadioNavigation Systems* published by the
 5 Departments of Defense and Transportation provides that "[t]he landing phase
 6 begins at the final approach fix (FAF) and continues through touchdown and
 7 rollout." (Alden Decl., Ex. D at 79) (emphasis added). Additionally, in examining
 8 aircraft accidents occurring during "landing," the National Transportation Safety
 9 Board and other air safety organizations do not limit their purview to mishaps
 10 during "touching down." (See, e.g., Alden Decl., Ex. E at 91) ("Other Landing
 11 Accidents. . . .The Board's investigation found that although the touchdown was
 12 uneventful, the airplane veered off the side of the runway shortly thereafter . . .").

13 That the term "landing" does not mean "touching down" to a person of
 14 ordinary skill in the art is also supported by common sense. There are those
 15 unfortunate travelers who have experienced a "bounced" landing. During a
 16 "bounced" landing, an aircraft may touch-down once, lift-off the ground again, and
 17 then touch-down a second time. (See, e.g., *id.* at 90 ("FDR data indicated that after
 18 the airplane's initial touchdown, it became airborne and rolled to the right as it
 19 touched down again . . .")). According to Honeywell, each of these touch-downs
 20 would be a separate "landing," even though the aircraft ultimately comes to rest on
 21 the ground only once. This is surely incorrect.

22 **B. "WhEn" and "upon"**

23 To support its narrowing of the claims to the weight-on-wheels preferred
 24 embodiment, Honeywell argues that the words "when" and "upon" in isolation
 25 require no construction. But these terms do not appear in isolation. They are part of
 26 a patent, and Phillips mandates that they must be construed as such. Phillips, 415
 27 F.3d at 1321 ("Properly viewed, the 'ordinary meaning' of a claim term is its
 28 meaning to the ordinary artisan after reading the entire patent.") (emphasis added).

1 It is for this reason that, unlike Honeywell, Teledyne construed claim phrases, as
 2 opposed to single, unrelated words.

3 For the reasons discussed above, the specification undeniably reveals that the
 4 inventor contemplated the transmission of data after landing. (See, e.g., Paunovich
 5 Decl., Ex. 1, 1:66-2:1 ("cellular infrastructure [is] in communication with the data
 6 communication unit after the aircraft has landed."); Id. at 2:64-65 (an aircraft
 7 "illustrated after landing.") (emphasis added)). The words "when" and "upon" are
 8 employed consistent with this intention. For example, the specification states that
 9 "[t]he processor 32 is responsive to a weight-on-wheels signal . . . to initiate
 10 transmission or reception of data when the aircraft has landed." (Id. at 3:26-30).
 11 Similarly, in discussing the prior art, the specification explains that "[w]hen the
 12 aircraft lands, ground personnel board the aircraft, remove the media, and mails the
 13 media . . ." (Id. at 1:33-34). In both of these instances, the term "when" is clearly
 14 used in the sense of "after."²

15 **C. "Automatically"**

16 Honeywell asks the Court to construe the word "automatically" so as to
 17 require no human involvement. The specification of the '990 patent, however,
 18 defines the word "automatically" as "little or no human involvement." (Paunovich
 19 Decl., Ex. 1, 1:55-58) (emphasis added). This definition appears in the description
 20 of the overall invention, and specifically in the context of "automatically
 21 transfer[ring] flight data":

22

23 ² Even if the Court were inclined to consult general dictionary definitions to
 24 construe the term "when"—for which there is no need in light of the specification—
 25 such definitions also support Teledyne's proposed constructions. (Alden Decl., Ex.
 26 F at 96 (when:- "after: *call me when you're finished.*"); Ex. G at 100 (when:- "4.
 27 after which, and then.")). And, even Honeywell concedes that one definition of the
 28 term "upon" is "following on." 19 THE OXFORD ENGLISH DICTIONARY 301 (2nd Ed.
 1989).

1 Thus, there is a need for an aircraft data transmission system that
 2 automatically transfers flight data from an aircraft to a flight
 3 operations center with little or no human involvement and which
 4 relies on a reliable wireless delivery system.

5 (Id.) (emphasis added). Teledyne's construction properly reflects this definition of
 6 the word "automatically" in the specification. Phillips, 415 F.3d at 1316 ("[T]he
 7 specification may reveal a special definition given to a claim term by the patentee . .
 8 . In such cases, the inventor's lexicography governs.").

9 Honeywell incorrectly contends that, in order to overcome a rejection,
 10 Teledyne disclaimed everything except the complete absence of human
 11 involvement. (HW Opening Brief at 9-10). But, contrary to Honeywell's assertion,
 12 in the Interview Summary of July 6, 2005, the patentee distinguished the Ross
 13 reference not on the basis of "human or manual activation," but rather on the basis
 14 that "Ross does not communicate [flight] data upon landing of the aircraft." (Alden
 15 Decl., Ex. A at 14) (emphasis added). More specifically, the patentee explained that
 16 "Ross only teaches sending a flight plan cancellation upon landing of an aircraft, not
 17 'flight data'. " (Id. at 20) (emphasis added).

18 Even if the definition of "automatic" in the specification is ignored, however,
 19 Honeywell's understanding of the word "automatic" is simply inconsistent with how
 20 even a lay person understands the word. (See Alden Decl., Ex. F at 95, THE NEW
 21 OXFORD AM. DICTIONARY (2nd Ed. 2005) (defining "automatic" as "1 (of a device
 22 or process) working by itself with little or no direct human control."); Ex. G at 99,
 23 THE CASSELL DICTIONARY & THESAURUS (1999) (defining "automatic" as "1
 24 operating without direct or continuous human intervention."); Ex. H at 103,
 25 MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th Ed. 1993) (cited by
 26 Honeywell for another term, defining "automatic" as "largely or wholly
 27 involuntary.") (emphasis added for all)).

1 Lastly, Honeywell attempts to support its narrow construction by pointing to
 2 constructions in other patents before the Federal Circuit. These constructions,
 3 however, are in the context of other patents and other file histories, and are therefore
 4 irrelevant. See Medrad, Inc. v. MRI Devices Corp., 401 F.3d 1313, 1318 (Fed. Cir.
 5 2005) ("the manner in which the term is used in the patent may dictate a definition
 6 that differs from the definition that would be given to the same term in a different
 7 patent with a different specification or prosecution history.").

8 **D. "In Response To"**

9 Honeywell argues that Teledyne's construction of the phrase "in response to"
 10 reads a "causal limitation" out of the claims. (HW Opening Brief at 10-11). But
 11 Teledyne does not construe the phrase "in response to" out of context, as Honeywell
 12 does. Rather, Teledyne construes the phrase, "cellular infrastructure is accessed in
 13 response to the signal." Unlike Honeywell's acontextual definition of a constituent
 14 phrase, Teledyne's construction harmonizes the claim language by clarifying that,
 15 although the signal from the "second sensor" may be one signal in response to which
 16 the cellular infrastructure is accessed, there may be additional signals.

17 As noted above, claims 18, 19 and 33 include "at least" a first or second
 18 sensor that senses the aircraft has landed. Under Honeywell's construction,
 19 however, the cellular infrastructure must be immediately accessed in response to the
 20 first or second sensor sensing the aircraft has landed, even though there may be
 21 additional sensors that have not yet sent their respective signals, such as a door
 22 opening signal. Teledyne's construction clarifies that the cellular infrastructure is
 23 accessed only after all of the sensors are triggered, whereas Honeywell's
 24 construction renders these additional sensors redundant.

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E. "Flight Data"

1. There Is Nothing In the Specification Or The File History That Limits "Flight Data" As Honeywell Proposes

The term "flight data" appears in independent claims 8, 14 and 25, where it is not limited to any specific parameters of flight data. By contrast, independent claims 1, 15, 18, 19 and 33 require the transmission of certain minimum parameters (*i.e.*, time, airspeed, altitude, vertical acceleration, and heading). Honeywell would improperly have the Court artificially narrow the term "flight data" in independent claims 8, 14, and 25, by inserting the additional limitations of independent claims 1, 15, 18, 19 and 33.

11 As an initial matter, even if the doctrine of claim differentiation is ignored, it
12 is clear that "flight data" must mean more than the parameters listed in Honeywell's
13 construction—"air speed, altitude, vertical acceleration, heading, and time"—
14 because otherwise the term "flight data" would be redundant in those claims that
15 feature both phrases. Innova, 381 F.3d at 1119 ("all claim terms are presumed to
16 have meaning in a claim.").

Moreover, there is nothing in the specification or the file history that supports artificially limiting "flight data" to a set of five parameters. To the contrary, the specification explains that "flight data" includes not just data relating to a flight direction and speed—such as those parameters identified by Honeywell—but also flight data relating to "performance" of an aircraft that can be used "to assist in maintenance of the aircraft." Specifically, the specification states:

It is common for aircraft to generate records of data relating to flight
and performance parameters for each flight of the aircraft . . . The
data are utilized in the event of an accident or a near-accident and to
assist in maintenance of the aircraft by detecting faulty components
or gradual deterioration of a system or component, to assist in

1 reviewing crew performance, and to assist in logistical planning
 2 activities such as scheduling and routing."

3 (Paunovich Decl., Ex. 1, 1:21-28) (emphasis added). All "flight and performance"
 4 data that can be used to "assist in maintenance of the aircraft," "reviewing crew
 5 performance" or "assist[ing] in logistical planning activities" were contemplated by
 6 the patentee. Honeywell has identified no intrinsic evidence to the contrary.

7 The plain language of the claims also makes clear that the term "flight data" is
 8 not limited as Honeywell suggests. For example, claim 1 describes "flight data" as
 9 "includ[ing] time, airspeed, altitude, vertical acceleration, and heading data relating
 10 to a flight of the aircraft." (Paunovich Decl., Ex. 2, 1:44-46) (emphasis added). As
 11 a patent law term of art, "includes" means "comprising," and its use does not
 12 foreclose the presence of additional elements that do not satisfy stated claim
 13 limitations. See SanDisk Corp. v. Memorex Products, Inc., 415 F.3d 1278, 1284
 14 (Fed. Cir. 2005).

15 2. The Term "Flight Data" Includes Far More Than Honeywell's
 16 Five Parameters

17 A person of ordinary skill in the art would have considered "flight data" to
 18 encompass more than Honeywell's five parameters. (Declaration of K. Prasad Nair).
 19 As early as 1997, aircraft were required to record 88 different parameters as part of
 20 "aircraft flight recorder specifications." (See Alden Decl., Ex. I at 104-118).
 21 Included among the 88 flight data parameters are "engine parameters," such as
 22 "vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3," and
 23 "engine warning" discretes, such as "vibration, temp, low pressure and speed." Id.
 24 Recording these 88 parameters is mandated by federal law. For Honeywell to thus
 25 contend that a person of ordinary skill in the art would have limited "flight data" to
 26 only five parameters is nothing short of fanciful.

27 What is more, Honeywell's proposed construction contradicts representations
 28 Honeywell made to the Patent Office concerning its own U.S. Patent No. 6,397,128

1 (issued may 28, 2002), which explicitly discusses the use of a "flight data" recorder
 2 and flight data acquisition unit to gather and store engine data. (Alden Decl., Ex. J,
 3 2:55-57) ("This results in the development of high accuracy, fast response engine
 4 digital signal sensors which have stimulated requirements for improved flight data
 5 monitoring systems.") (emphasis added)). Having itself acknowledged that "flight
 6 data" includes engine data, Honeywell cannot now seek to narrow its definition for
 7 strategic purposes.

8 Finally, Honeywell resorts to discussions with the U.K. Patent Office by
 9 Teledyne's foreign patent agents. This approach ignores the Federal Circuit maxim
 10 that statements in a foreign jurisdiction are irrelevant to the construction of these
 11 terms in the United States. See, e.g., Pfizer, Inc. v. Ranbaxy Labs., Ltd., 457 F.3d
 12 1284, 1290 (Fed. Cir. 2006) ("statements made during prosecution of foreign
 13 counterparts to [a] patent are irrelevant to claim construction because they were
 14 made in response to patentability requirements unique to [foreign] law.").³

15 **F. "Data Acquisition Unit"**

16 Again ignoring the doctrine of claim differentiation, Honeywell attempts to
 17 re-write the claim phrase "data acquisition unit" as "flight data acquisition unit."
 18 But Teledyne knew how to write "flight data acquisition unit," having used this
 19 phrase in claims 8, 13, 14, 19, 25, 29, and 33. Having used a different phrase in
 20 claims 1, 15 and 18, the principle of claim differentiation counsels against giving
 21 them the same meaning, as Honeywell advocates. Comark Comm. Inc. v. Harris
 22 Corp., 156 F.3d 1182, 1187 (Fed. Cir. 1998) ("There is presumed to be a difference

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 24
 25 ³ Honeywell also conveniently omits that the U.K. Patent Office Examiner
 26 initially rejected the argument that downloading maintenance data was not disclosed
 27 by the '990 patent, pointing specifically to lines 21-28 of column 1 of the patent
 28 relied on by Teledyne in this proceeding. (File History of U.K. Patent Application
 No. 0323990.2, November 16, 2005 Examination Report).

1 in meaning and scope when different words or phrases are used in separate
 2 claims.").⁴

3 Honeywell's attempt to re-write claim language once again ignores Phillips
 4 and imports a limitation from a preferred embodiment. But even the passage in the
 5 specification on which Honeywell relies undermines its argument: "The data
 6 acquisition unit 20 includes a digital flight data acquisition unit (DFDAU) processor
 7 22, . . ." (Paunovich Decl., Ex. 1, 3:10-11) (emphasis added). It is difficult to see
 8 how the patentee could have been any clearer: a "data acquisition unit" and a "flight
 9 data acquisition unit" are different things because one may include the other. The
 10 term "data acquisition unit" has a clear and well-defined meaning: a unit that
 11 gathers or "acquires" data, which includes, but is not limited to, a "flight data
 12 acquisition unit." There is nothing in the intrinsic record that supports Honeywell's
 13 effort to limit the term "data acquisition unit" to the preferred embodiment.

14 Honeywell also attempts to support its artificially narrow construction with
 15 the declaration of Chris Wargo. Mr. Wargo's declaration, however, simply parrots
 16 Honeywell's arguments. As the *en banc* Federal Circuit has observed, "conclusory,
 17 unsupported assertions by experts as to the definition of a claim term are not useful
 18 to a court. Similarly, a court should discount any expert testimony that is clearly at
 19 odds with the . . . written record of the patent." Phillips, 415 F.3d at 1318 (internal
 20 quotations omitted). For the same reasons explained above, Mr. Wargo's conclusory
 21 declaration contradicts the intrinsic evidence and cannot be given any weight.

22 **G. "Cellular Infrastructure/Cellular Communications
 23 Infrastructure/Cellular Telephone Infrastructure"**

24 The "cellular infrastructure" terms in the '990 patent do not require
 25 construction. Honeywell's argument that the average juror will not understand these

26
 27 ⁴ It should be noted that Teledyne does not accept Honeywell's definition of the
 28 (footnote continued)

1 terms is simply not credible. Nonetheless, the parties' only dispute regarding the
 2 "cellular infrastructure" terms is Honeywell's attempt to include unclaimed,
 3 structural components into the claims, *i.e.*, "a base station transceiver subsystem
 4 connected to a base station controller." Once again, Honeywell argues that the
 5 Court should limit these terms to the preferred embodiment, despite the Federal
 6 Circuit's contrary instruction in Phillips.

7 Honeywell's narrow construction also violates the doctrine of claim
 8 differentiation by rendering two dependent claims superfluous. Claim 6 and 39
 9 narrow the "cellular infrastructure" and "cellular telephone infrastructure" elements
 10 of independent claims 1 and 8 to include a transceiver and controller. (Paunovich
 11 Decl., Ex. 1, 7:5-10; Ex. 2, 2:65-3:4 ("an antenna; a transceiver subsystem in
 12 communication with said antenna; and a controller in communication with said
 13 transceiver subsystem.") (emphasis added)). To interpret the terms "cellular
 14 infrastructure" and "cellular telephone infrastructure" to include a "base station
 15 transceiver subsystem connected to a base station controller," as Honeywell urges,
 16 would thus render claims 6 and 39 superfluous of claims 1 and 8. Comark, 156 F.3d
 17 at 1187 ("There is presumed to be a difference in meaning and scope when different
 18 words or phrases are used in separate claims."). Honeywell has not shown any
 19 reason to rebut the presumption of claim differentiation. Id.

20 **H. "Serial Card"**

21 Honeywell's construction of the term "serial card"—*i.e.*, "a circuit board with
 22 I/O interfaces that each transmit data to or from a peripheral device one bit at a
 23 time"—once again ignores Phillips and the doctrine of claim differentiation, and
 24 improperly imports structural limitations from the preferred embodiment into the
 25 claims. There is nothing in the claim language, specification or file history that

26 _____
 27 term "flight data acquisition unit" in light of the specification.
 28

1 limits a "serial card" to the "multi-port serial card" identified as a preferred
 2 embodiment in the specification. That claims 8 and 14 contemplate a "serial card"
 3 in communication with "a plurality of cell channels" does not justify importing a
 4 particular structure for accomplishing this into the claims.

5 What is more, even the general dictionaries on which Honeywell improperly
 6 relies say nothing about "I/O interfaces" or "peripheral devices". (HW Opening
 7 Brief p. 16). If the patentee had wanted to limit the term "serial card" to a particular
 8 structure, it would have done so. It did not. Phillips, 415 F.3d at 1323 ("[W]e have
 9 expressly rejected the contention that if a patent describes only a single
 10 embodiment, the claims of the patent must be construed as being limited to that
 11 embodiment . . .).

12 **I. "Flight Operation Center"**

13 This phrase requires no construction. Nonetheless, were the Court inclined to
 14 construe the phrase, the specification makes clear that a "flight operation center" is
 15 nothing more than the location where the downloaded flight data is processed and
 16 analyzed. (Paunovich Decl., Ex. 1 at 5, 13) (figures 2 and 11 of the patent illustrate
 17 that the "flight operations center (18)" contains the "data reception unit (47)."').
 18 Contrary to what Honeywell would have the Court believe, neither the claims nor
 19 the specification make any mention of a "base of operations for an airline or other
 20 aircraft operator."

21 Even if the Court were to consider extrinsic evidence (which is not needed in
 22 this instance), the Teledyne advertisement raised by Honeywell does not support its
 23 proposed construction. Indeed, the advertisement never even refers to a "flight
 24 operation center." And, Honeywell has offered no evidence—nor could it—that the
 25 Teledyne marketing personnel who developed the relevant advertisement intended
 26 thereby to construe, and limit the scope of, the '990 patent.

27
 28

1 **J. Claim 25 ("Threads"/"Primary Data Thread"/"Threads Are
2 Active")**

3 **1. Honeywell's Indefiniteness Argument Is Meritless**

4 Honeywell incorrectly argues that claim 25 is indefinite because the claim
5 includes a "transmitting step"—i.e., "starting a primary data thread"—among
6 "processing" steps. (HW Opening Brief, p. 17-18). As an initial matter, it is clear
7 from Teledyne's construction of the term "primary data thread"—i.e., "a thread that
8 causes the initial call to be made to the cellular infrastructure"—that the "primary
9 data thread" does not transmit data itself, as Honeywell suggests, but merely causes
10 the communications channel with the cellular infrastructure to be opened.

11 Accordingly, there is no intermingling of "processing" and "transmitting" steps.

12 Secondly, even if "starting a primary data thread" did transmit data—which it
13 does not—there is nothing in claim 25 that precludes the simultaneous processing
14 and transmission of data, as Honeywell presumes. To the contrary, claim 25
15 expressly contemplates that data will be concurrently processed and transmitted.
16 (Paunovich Decl., Ex. 1, 8:63-65) ("repeating, when threads are active, the steps of
17 waiting a predetermined period of time and determining if any threads are active.").

18 Finally, Union Pacific Resources Company v. Chesapeake Energy
19 Corporation, 236 F.3d 684 (Fed. Cir. 2001) does not support Honeywell's argument.
20 The Union Pacific court did not find the at-issue claims indefinite for "mixed" steps.
21 Rather, the court found that the patent did not adequately define a claim term. Id. at
22 692 ("Thus, the 951 patent does not define the means to "compare" the two sets of
23 characterizing information. The district court correctly found that the "comparing"
24 steps in claims 1 and 6 are indefinite.").

25 **2. Honeywell's Construction of the Term "Data Thread" Improperly
26 Imports the Preferred Embodiment from the Specification**

27 Honeywell proposes that the addition of the word "data" in "data thread" adds
28 a whole sentence of structural limitations to claim 25. (Honeywell's Opening Brief,

1 p. 18 (" . . . for conveying data packets to a multi-port serial card for transmission
 2 via one of a fixed number of corresponding cell channels.")). Nothing in claim 25,
 3 the specification, or the file history so limits the term "data thread." Indeed, the
 4 passage in the specification on which Honeywell relies does not even mention the
 5 term "data thread." Even if it did, it is clear that this passage is merely discussing a
 6 preferred embodiment. (Paunovich Decl., Ex. 1, 6:27-31) ("While the present
 7 invention has been described in conjunction with preferred embodiments thereof,
 8 many modifications and variations will be apparent to those of ordinary skill in the
 9 art.").

10 Honeywell's contention that the term "threads are active" should be construed
 11 as "more than one thread is active" because the claim uses the plural "threads" is
 12 grammatically incorrect. As Honeywell acknowledges, claim 25 contains the step
 13 of "determining if any threads are active." (*Id.* at 8:62) As Honeywell's own
 14 dictionary definitions show, the term "any" means "one (no matter which) of more
 15 than two." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED 83 (2nd
 16 ed. 1979). Thus, claim 25 covers determining if one thread from a plurality of
 17 threads is active. It does not require that more than one thread be active, as
 18 Honeywell urges.

19 More importantly, Honeywell ignores the definition given to the term in the
 20 specification. (Paunovich Decl., Ex. 1, 5:4-6) (" . . . the processor determines if any
 21 threads are active, i.e., if there are any packets that haven't been transmitted or have
been transmitted and dropped.").

23 **K. Claim 15: "Means-Plus-Function"**

24 The only dispute regarding the means-plus-function language of claim 15
 25 concerns how much structure is needed for the "means for transmitting." Here again,
 26 Honeywell ignores Federal Circuit maxims by seeking to incorporate details from
 27 the specification into the claim that are not claim limitations. See Odetics, Inc. v.
 28 Storage Tech. Corp., 185 F.3d 1259, 1268 (Fed. Cir. 1999) ("The individual

1 components, if any, of an overall structure that corresponds to the claimed function
 2 are not claim limitations. Rather, the claim limitation is the overall structure
 3 corresponding to the claimed function.").⁵

4 Consistent with the description in the specification, Teledyne proposes that
 5 the corresponding structure is a "communications unit, including a computer
 6 processor, serial card, cell channel and antenna, and all equivalents thereof."
 7 (Paunovich Decl., Ex. 1, 3:31-41). This is the only structure necessary to perform
 8 the claimed function, and it is this "overall structure corresponding to the claimed
 9 function," and nothing more, that limits the scope of the claim. Honeywell's request
 10 that the Court unnecessarily import each and every detail of each and every
 11 component violates the rule of Odetics.

12 Honeywell also contends that the corresponding structure for the "means for
 13 transmitting" element must include an algorithm (*i.e.*, specific program code). But,
 14 contrary to Honeywell's contention, no algorithm is disclosed in the specification
 15 and none is needed. See Med. Instrumentation & Diagnostics Corp. v. Elekta AB,
 16 344 F.3d 1205, 1214 (Fed. Cir. 2003), cert. denied, 124 S.Ct. 1715 (2004) ("[T]here
 17 would be no need for a disclosure of the specific program code if . . . one skilled in
 18 the art would know the kind of program to use."); PolyVision Corp. v. Smart Tech.
 19 Inc., 501 F. Supp. 2d 1042, 1058 (W.D. Mich. 2007) (identifying the structure to
 20 accomplish the stated function as, in part, a computer processor and holding that
 21 description of program (*e.g.*, flow charts) was not part of the structure because there
 22 was no algorithm or software code disclosed) (emphasis added).

23 At bottom, the corresponding structure of the "means for transmitting"
 24 element at issue (*i.e.*, a communications unit) simply does not warrant the
 25

26
 27 ⁵ In its brief, Honeywell does not oppose Teledyne's proposed structure for
 28 "sensing means" or "means for receiving." (HW Opening Brief, p. 10-11.)

1 incorporation of an algorithm (let alone the method described in claims 25-28) for
 2 transmitting flight data.

3 **IV. HONEYWELL'S '152 PATENT**

4 Honeywell's analysis of the key terms "first communication medium,"
 5 "second communication medium," "aeronautical satellite system" and "direct
 6 broadcast satellite" ignores the plain language of the claims, the file history, and the
 7 Examiner's reasons for allowance. The Examiner initially rejected each as-filed
 8 claim of the '152 patent as anticipated. (Paunovich Decl., Ex. 7 at 64-68). To
 9 overcome this rejection, Honeywell amended the claims to include a "first
 10 communication medium comprising: an aeronautical satellite system" and "a second
 11 communication medium comprising a direct broadcast satellite." (Paunovich Decl.,
 12 Ex. 8 at 84-88) (emphasis added). It was only on the basis of Honeywell's inclusion
 13 of these two satellites, "an aeronautical satellite system" and a "direct broadcast
 14 satellite" that the Examiner allowed the patent:

15 The following is an examiner's statement of reasons for allowance:
 16 the prior art made of record does not teach or fairly suggest in
 17 combination a data communication system for retrieving data
 18 information, said data communications system comprising: . . . first
 19 communication medium comprising: an aeronautical satellite system
 20 and a ground station, . . . a second communication medium
 21 comprising a direct broadcast satellite . . .

22 (Paunovich Decl., Ex. 9 at 92). Honeywell cannot now ignore its arguments to the
 23 Examiner and the Examiner's Reasons for Allowance to recapture by claim
 24 construction what it surrendered during prosecution.

25 Honeywell contends that—contrary to the specification, its arguments to the
 26 Patent Office, and the Examiner's reasons for allowance—the first and second
 27 communication media "may comprise any suitable media." (Honeywell's Opening
 28 Brief, p. 20). But that is not what the claims say. Both claims 1 and 10 plainly state

1 that the "first communication medium compris[es]: an aeronautical satellite system
 2 and a ground station [and] . . . a radio ground station." (Paunovich Decl., Ex. 6,
 3 10:55-67, 12:55-67). Similarly, these claims expressly define the "second
 4 communication medium [as] comprising a direct broadcast satellite." (Id. at 11:4-7,
 5 13:11-14). These limitations were added by amendment to overcome the
 6 Examiner's rejections.

7 Having expressly defined the communication media in the claims and in the
 8 file history when these amendments were made, Honeywell cannot rely on the
 9 specification to read out these elements. See, e.g., Schoenhaus v. Genesco, Inc., 440
 10 F.3d 1354, 1358-59 (Fed. Cir. 2006) (rejecting argument to read limitation "rigid"
 11 out of claim); Apple Computer, Inc. v. Articulate Sys., Inc., 234 F.3d 14, 25 (Fed.
 12 Cir. 2000) (rejecting a construction that would "read the qualifier 'help' out of the
 13 definition of 'help' access window."). Moreover, Honeywell's construction also
 14 defies common sense. Why would the claims include both a "first communication
 15 medium" and a "second communication medium" if they were the same thing?
 16 CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG, 224 F.3d 1308, 1317
 17 (Fed. Cir. 2000) ("we must presume that the use of . . . different terms in the claims
 18 connotes different meanings.").

19 Honeywell's argument that a "direct broadcast satellite" ("DBS") is merely "a
 20 subset of the larger 'aeronautical satellite system'" suffers from the same
 21 fundamental flaws. Both the claims and the specification expressly distinguish
 22 between an "aeronautical satellite system" and a "direct broadcast satellite."
 23 Nowhere is this more clearly illustrated than in Figure 3 of the patent, which clearly
 24 shows the "DBS satellite" and the aeronautical satellite systems" to be different.
 25 (Paunovich Decl., Ex. 6 at 53). Moreover, unlike the reference in the patent to the
 26 Inmarsat system as an aeronautical satellite, nowhere does the specification mention
 27 DBS as an example of an "aeronautical satellite system." (Id. at 8:29-34).

1 **V. HONEYWELL'S '468 PATENT**

2 **A. "Vehicle Server" and "Component"**

3 The parties only argument with respect to the claim terms "vehicle server"
 4 and "component" is whether these devices must be separate. In other words, the
 5 parties dispute whether the "component" can be the "vehicle server." But the Court
 6 need only look to the language of the '468 claims to determine that "the applicant
 7 regards [] his invention" as including a separate "vehicle server" and "component":

8 1. A method of providing a data update to a vehicle, the method
 9 comprising the steps of:

10 obtaining and storing said data update at a system server;
 11 forwarding said data update from said system server to a vehicle
 12 server via a data connection;

13 loading said data update from said vehicle server into a
 14 component at said vehicle; and

15 verifying from said vehicle server to said system server via said
 16 data connection that said loading step completed successfully.

17 (Paunovich Decl., Ex. 13, 10:35-45).

18 Honeywell's construction must therefore be rejected because it would
 19 eliminate the claim limitation requiring that the "vehicle server" perform the loading
 20 step into a separate component. See, e.g., Autogiro Co. of Am. v. U.S., 384 F.2d
 21 391, 396 (Ct. Cl. 1967) ("Courts can neither broaden nor narrow the claims to give
 22 the patentee something different than what he has set forth."); Panduit Corp. v.
 23 Dennison Mfg. Co., 810 F.2d 1561, 1576 (Fed. Cir. 1987) ("A disregard of patent
 24 claim limitations . . . would render claim examination in the [Patent and Trademark
 25 Office] meaningless.").

26 Teledyne's construction is also supported by the specification of the '468
 27 patent. There, the "component" is described as "any avionics or other aircraft device
 28 such as a flight management computer (FMC), flight management system (FMS),

1 global positioning system (GPS), navigation computer or the like." (Paunovich
 2 Decl., Ex. 13, 5:46-49) (emphasis added). There is no suggestion that the device is a
 3 constituent part of the "vehicle server." (See also Alden Decl., Ex. K at 126, THE
 4 AUTHORITATIVE DICTIONARY OF IEEE STANDARD TERMS 1031 (7th ed. 2000)
 5 (defining "server" as "[i]n a network, a device or computer system that is dedicated
 6 to providing specific facilities to other devices attached to the network.") (emphasis
 7 added)).

8 Honeywell also claims that the "component" need not "use the data update to
 9 perform a function." But the '468 patent is directed to providing and verifying the
 10 successful loading of data updates to devices, such as a navigation unit. The patent
 11 is not directed merely to transferring data from point A to point B without ever
 12 using it. (Paunovich Decl., Ex. 13, 1:15-18, "As pilots, drivers, passengers and
 13 others become increasingly dependent upon computerized devices to control,
 14 navigate or otherwise affect their craft, the need for current data becomes
 15 paramount."). Teledyne's construction for the term "component" properly
 16 incorporates the practical reality that the device ("component") that receives the data
 17 update must use it to perform a function. (Id. at 5:45-54) ("[c]omponent 118 . . .
 18 suitably uses data upgrades . . . to perform a function.").⁶

19 DATED: December 17, 2007 QUINN EMANUEL URQUHART OLIVER &
 20 HEDGES, LLP

21 By /s/ Steven M. Anderson
 22 Steven M. Anderson
 23 Attorneys for Plaintiff and Counter-Defendant
 24 Teledyne Technologies Incorporated

25 ⁶ Honeywell contends that the only terms needing construction in the '468
 26 patent are "vehicle server" and "component." However, avionics is a specialized
 27 field with many terms that have a specific meaning to a person of ordinary skill in
 28 the art. Accordingly, Teledyne respectfully requests that the Court construe all of
 the terms explained by Teledyne in its Opening Claim Construction Brief.